

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:10-HC-2153-BO

| | | |
|--------------------------|---|----------------------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | MOTION FOR VOLUNTARY |
| |) | DISMISSAL WITH LEAVE |
| |) | OF COURT |
| LARRY SULLIVAN, |) | |
| |) | |
| Respondent. |) | |

Petitioner the United States of America, by and through the United States Attorney for the Eastern District of North Carolina, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, hereby moves the Court to voluntarily dismiss, the certification of a sexually dangerous person against Respondent, Larry Sullivan.

A settlement agreement, subject to the Court's approval, is attached hereto as Exhibit A, which details the manner in which the parties propose that this matter be concluded. Pursuant to the terms of the settlement agreement, the parties jointly request that the Court conduct a hearing to inquire of counsel for the United States, the Respondent, and Respondent's counsel whether each of them personally affirms in open court that the terms and conditions of the settlement agreement have been

entered and undertaken knowingly and voluntarily after having adequate opportunity to seek counsel.

WHEREFORE, Petitioner requests that the Court allow Petitioner to voluntarily dismiss the certification of a sexually dangerous person against Respondent, Larry Sullivan, subject to the above-mentioned terms.

Respectfully submitted this the 14th day of September, 2011.

THOMAS G. WALKER
United States Attorney

By: /s/ Michael G. James
MICHAEL G. JAMES
Attorney for Defendants
Assistant United States Attorney
Civil Division
310 New Bern Avenue, Suite 800
Raleigh, NC 27601-1461
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Facsimile: (919) 856-4821
E-Mail: mike.james@usdoj.gov
N.Y. Bar No. 2481414

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing has been served upon Joseph H. Craven, Office of the Federal Public Defender, counsel for respondent, by electronically filing the foregoing with the Clerk of Court this date, September 14, 2011, using the CM/ECF system which will send notification of such filing to the above.

/s/ Michael G. James
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Attorney for Petitioner

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

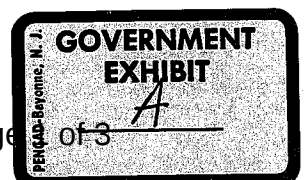
No. 5:10-HC-2153-BO

UNITED STATES OF AMERICA,)
 Petitioner,)
)
 v.) SETTLEMENT AGREEMENT
)
LARRY SULLIVAN,)
 Respondent.)

Petitioner, the United States of America, by and through the United States Attorney for the Eastern District of North Carolina, and Respondent, Larry Sullivan, by and through his counsel of record, Joseph Craven, have agreed that this matter should be concluded in accordance with terms and conditions of this agreement as follows:

1. This agreement constitutes the full and complete record of the agreement of this matter. There are no other terms of this agreement in addition to or different from the terms contained herein.

2. Respondent admits and stipulates that the United States lawfully certified Respondent as a sexually dangerous person under the Adam Walsh Act, as codified in 18 U.S.C. § 4248 pursuant to procedures established in 18 U.S.C. § 4248(a) and that said statute was upheld as constitutional in United States v. Comstock, 130 S.Ct. 1949 (2010), and again on remand to the Fourth Circuit of Appeals, in United States v. Comstock, 627 F.3d 513 (4th Cir.



2010), and that based on the above established procedures his release from imprisonment was stayed on July 15, 2010.

3. Respondent admits and stipulates that the criminal judgment against him in the matter of United States of America v. Larry Sullivan, in the United States District Court for the Northern District of Florida, Docket No. 3:95-CR-3062-01, on January 5, 1996, for Aggravated Sexual Abuse, in violation of 18 U.S.C. § 2241(a)(1), imposed upon him a five (5) year term of supervised release, and that the judgment ordered that the term of supervised release was to be served "upon release from imprisonment." Respondent admits and stipulates that, by the operation of law defined by 18 U.S.C. § 4248, his "release" from imprisonment was "stayed," and that, consequently, his term of supervised release has not commenced. See e.g. David H. Tobey v. United States, Civil Action No. DKC 10-1358 (Chasanow, Judge) (D. Md.); United States v. Marvin Vigil, Criminal No. 1:99-CR-509-LH (Hansen, Judge). A copy of the criminal judgment is attached to the proposed motion to dismiss as Exhibit B.

4. Respondent agrees and promises that, in consideration of the United States' agreement to voluntarily dismiss this action, he will not collaterally attack the order of supervised release contained in the criminal judgment against him.

5. Petitioner agrees and promises that, in consideration of Respondent's admissions and stipulations set out in Paragraphs 2

through 3 above and Respondent's agreements and promise in Paragraph 4 above, the United States will file a motion under Rule 41 of the Federal Rules of Civil Procedure asking the Court to dismiss this action and to lift the stay on Respondent's release from imprisonment.

6. Petitioner and Respondent jointly request that the Court conduct a hearing to inquire of counsel for the United States, Respondent, and Respondent's counsel whether each of them personally affirms in open court that the terms and conditions of this settlement agreement have been entered and undertaken knowingly and voluntarily after having had adequate opportunity to seek counsel.

Respectfully submitted on this the 13th day of September, 2011.

THOMAS G. WALKER
UNITED STATES ATTORNEY

BY:

Michael G. James
MICHAEL G. JAMES
Assistant U.S. Attorney

Larry Sullivan
LARRY SULLIVAN
Respondent

Joseph Craven
JOSEPH CRAVEN
Attorney for Respondent

APPROVED, this _____ day of _____, 2011.

TERRENCE W. BOYLE
United States District Judge

United States District Court

Northern District of Florida

UNITED STATES OF AMERICA
v.

LARRY ARGUS SULLIVAN

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: **3:95CR03062-001****Thomas S. Keith, Esquire**

Defendant's Attorney

THE DEFENDANT:☒ pleaded guilty to count(s) 1☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.**Title & Section****Nature of Offense****Date Offense
Concluded****Count
Number(s)**

18 U.S.C. ' 2241 (a)(1)

Aggravated sexual abuse

08/12/1995

1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____☒ Count(s) 2 _____ is dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's USM No.: _____

Defendant's Residence Address:

#4 N.W. Maples Street

Fort Walton Beach

FL

32548

Defendant's Mailing Address:

#4 N.W. Maples Street

Fort Walton Beach

FL

32548

01/04/1996

Date of Imposition of Judgment

Signature of Judicial Officer

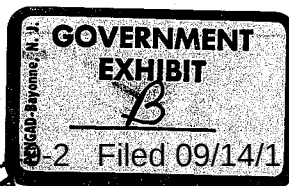
ROGER VINSON

U. S. District Judge

Name & Title of Judicial Officer

CLERK
U.S. DISTRICT CT.
NORTHERN DIST. FLA.
FORT WALTON BEACH

95 JAN -5 AM 8:52



DEFENDANT: LARRY ARGUS SULLIVAN

CASE NUMBER: 3:95CR03062-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 210 month(s).

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ a.m./p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

Deputy U S Marshal

DEFENDANT: LARRY ARGUS SULLIVAN

CASE NUMBER: 3:95CR03062-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 year(s).

See Additional Supervised Release Terms - Sheet 3.01

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page (if indicated below).

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: LARRY ARGUS SULLIVAN
CASE NUMBER: 3:95CR03062-001

ADDITIONAL SUPERVISED RELEASE TERMS

- 1) The defendant shall pay the remaining balance of any restitution owed on a payment schedule to be determined by the supervising U. S. Probation Officer.
- 2) The defendant shall have no contact with the victim, Madge Foster, or with witnesses, or those identified as victims, at the sentencing hearing.

DEFENDANT: LARRY ARGUS SULLIVAN

CASE NUMBER: 3:95CR03062-001

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

| | <u>Assessment</u> | <u>Fine</u> | <u>Restitution</u> |
|---------|-------------------|-------------|--------------------|
| Totals: | \$ 50.00 | \$ | \$ 8,667.35 |

☐ If applicable, restitution amount ordered pursuant to plea agreement \$ _____

FINE

The above fine includes costs of incarceration and/or supervision in the amount of \$ _____.

The defendant shall pay interest on any fine of more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

RESTITUTION

☐ The determination of restitution is deferred in a case brought under Chapters 109A, 110, 110A and 113A of Title 18 for offenses committed on or after 09/13/1994, until _____. An Amended Judgment in a Criminal Case will be entered after such determination.

☒ The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

| <u>Name of Payee</u> | <u>** Total Amount of Loss</u> | <u>Amount of Restitution Ordered</u> | <u>Priority Order or Percentage of Payment</u> |
|----------------------|------------------------------------|--|--|
| Madge E. Foster | \$8,667.35 | \$8,667.35 | |

Totals: \$ 8,667.35 \$ 8,667.35

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994.

DEFENDANT: LARRY ARGUS SULLIVAN

CASE NUMBER: 3:95CR03062-001

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A ☒ in full immediately; or
- B ☐ \$ _____ immediately, balance due (in accordance with C, D, or E); or
- C ☐ not later than _____; or
- D ☐ in installments to commence _____ day(s) after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or
- E ☐ in _____ (e.g. equal, weekly, monthly, quarterly) installments of \$ _____ over a period of _____ year(s) to commence _____ day(s) after the date of this judgment.

The National Fine Center will credit the defendant for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

The defendant shall make restitution in accordance with the provisions of 18 USC 3663 through the Federal Bureau of Prisons Voluntary Inmate Financial Responsibility Program while incarcerated, if employed. Upon release from custody, payment of any restitution balance shall be a special condition of supervised release.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States Courts National Fine Center, Administrative Office of the United States Courts, Washington, DC 20544, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program. If the National Fine Center is not operating in this district, all criminal monetary penalty payments are to be made as directed by the court, the probation officer, or the United States attorney.

DEFENDANT: LARRY ARGUS SULLIVAN

CASE NUMBER: 3:95CR03062-001

STATEMENT OF REASONS

☐ The court adopts the factual findings and guideline application in the presentence report.

OR

☒ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Paragraph 28 understates the seriousness of the injuries received by the victim and should be raised 1-level.

Guideline Range Determined by the Court:

Total Offense Level: 31

Criminal History Category: I

Imprisonment Range: 97 to 121 months

Supervised Release Range: 3 to 5 years

Fine Range: \$ 15,000.00 to \$ 150,000.00

☒ Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: \$

☐ Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

☐ For offenses that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

☐ Partial restitution is ordered for the following reason(s):

☐ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

☒ The sentence departs from the guideline range:

☐ upon motion of the government as a result of defendant's substantial assistance.

☒ for the following specific reason(s):

See Additional Reasons For Departure From The Guideline Range - Sheet 6.01

DEFENDANT: LARRY ARGUS SULLIVAN
CASE NUMBER: 3:95CR03062-001

ADDITIONAL REASONS FOR DEPARTURE FROM THE GUIDELINE RANGE

Under guideline 5K2.8, the defendant's extreme conduct requires an upward departure equal to one additional level. The evidence established that the defendant intentionally tried to inflict pain and humiliation upon the victim, and used various means of torture. Under guideline 4A1.3, the defendant's criminal history of 0 plainly did not reflect the seriousness of the defendant's past criminal history, particularly his history of similar aggravated sexual abuse, and the likelihood that the defendant would commit further crimes of a similar nature. Therefore, the old sexual assault conviction and the two prior incidents of sexual abuse established by a preponderance of the evidence were included to more accurately reflect the defendant's criminal history and propensity of 8 points (Category IV instead of Category I). The resulting range for departure was 168 - 210, and the maximum was imposed because of the aggravated nature of the multiple acts of the sexual abuse.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:10-HC-2153-B0

| | | |
|--------------------------|---|-------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| Petitioner, |) | |
| |) | ORDER |
| v. |) | |
| |) | |
| LARRY SULLIVAN |) | |
| |) | |
| Respondent. |) | |

The Court has considered Petitioner's Motion for Voluntary Dismissal and the Settlement Agreement entered into between the parties. The United States, the Respondent, and Respondent's counsel have each personally affirmed in open court that the terms and conditions of the settlement agreement have been entered and undertaken knowingly and voluntarily after having adequate opportunity to seek counsel. The Court finds as a fact that the parties knowingly and voluntarily entered into the Settlement Agreement.

IT IS HEREBY ORDERED that pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure and for good cause, this action is DISMISSED.

IT IS FURTHER ORDERED that the stay of Respondent's release from Bureau of Prisons custody is lifted, and Respondent is ordered to be released from Bureau of Prisons custody. As set

out in the criminal judgment in the matter of United States America v. Larry Sullivan, in the United States District Court for the Northern District of Florida, Docket No. 3:95-CR-3062-01, on January 5, 1996, the Respondent shall report to the probation office in the Northern District of Florida within 72 hours of his release.

This the ____ day of September, 2011.

TERRENCE W. BOYLE
United States District Judge